

ORDINANCE NO. 2523

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 18 CABLE COMMUNICATIONS, BY AMENDING SECTION 18-11 LICENSE APPLICATIONS, SECTION 18-21 TRANSFERS AND ASSIGNMENTS, SECTION 18-38 ACCEPTANCE AND EFFECTIVE DATE OF LICENSE, SECTION 18-64 BILLING PRACTICES; INFORMATION AND PROCEDURES, SECTION 18-82 PROTECTION OF TOWN AGAINST LIABILITY, SECTION 18-84 CONSTRUCTION BONDS, AND SECTION 18-100 MISCELLANEOUS PROVISIONS RELATED TO THE APPLICATION, APPROVAL, AND SUPERVISION OF LICENSES TO OPERATE, MAINTAIN, CONSTRUCT, OR RECONSTRUCT CABLE SYSTEMS IN THE TOWN; AND CHAPTER 19 TELECOMMUNICATIONS SERVICE, BY AMENDING SECTION 19-4 LICENSE APPLICATION RELATED TO THE ISSUANCE OF LICENSES OR FRANCHISES TO CONSTRUCT, OPERATE, INSTALL, AND MAINTAIN TELECOMMUNICATION FACILITIES IN STREETS AND OTHER HIGHWAYS OF THE TOWN; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY.

WHEREAS, Gilbert recognizes that its citizens benefit from cable and telecommunication services provided through agreements with private entities to use the publically-owned right of way; and

WHEREAS, Gilbert strives to ensure that it uses public resources dedicated to managing such agreements in the most efficient and logical manner possible; and

WHEREAS, Gilbert staff believes that it would be advantageous for the Town Manager to assume responsibility for overseeing certain cable and telecommunication agreements and processes currently tracked by the Town Clerk;

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

The Code of Gilbert, Arizona, Chapter 18 Cable Communications, Section 18-11 License applications, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 18-11. License applications.

Each application for a license or a renewal license to construct, operate or maintain any cable system in the town shall be filed with the town ~~clerk~~ MANAGER and in a form prescribed by the town. An application shall require, but shall not be limited to the following information:

* * *

The Code of Gilbert, Arizona, Chapter 18 Cable Communications, Section 18-21 Transfers and assignments, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 18-21. Transfers and assignments.

* * *

(d) Except in the case of an assignment of the license to an affiliate of licensee, upon written notification by the licensee to the town of a proposed assignment of the license, or transfer of control or ownership of the licensee company, the manager shall issue his written notice fixing and setting forth the day, hour and place certain when and where any persons having any interest therein may appear and be heard. The ~~clerk~~ MANAGER shall cause such notice to be published in a newspaper of general circulation within the town. The ~~clerk~~ MANAGER also shall cause a copy of such notice to be mailed to the licensee at least ten days prior to the date specified for the hearing. At the time set for such hearing, or at any adjournment thereof, the manager shall proceed to hear the matter. Following the close of such hearing, the manager shall prepare and file with the council his report of the hearing, his findings, and an opinion containing his recommendations and the reasons therefor. If after the expiration of ten days following receipt of the manager's report and opinion, the council shall find that the assignment of the license or transfer of control or ownership of the licensee company will not be detrimental or injurious to the best interests and welfare of the subscribers and users, and of the town, then the council by resolution shall consent to the assignment of the license or transfer of control or ownership of the licensee company. Such resolution shall thereupon become and shall be a part of any license granted under this chapter and affected thereby.

* * *

The Code of Gilbert, Arizona, Chapter 18 Cable Communications, Section 18-38 Acceptance and effective date of license, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 18-38. Acceptance and effective date of license.

* * *

(b) Within 20 days after the effective date of the ordinance awarding any license, or within such extended period of time as the council in its discretion may authorize, the licensee shall file with the ~~clerk~~ MANAGER its written acceptance of the license, in a form satisfactory to the town attorney, together with the letter of credit, construction bond and insurance policies required by this chapter, and its agreement to be bound by and to comply with and to do everything which is required of the licensee by the provisions of this chapter and the applicable license. Such acceptance shall be acknowledged by the licensee before a notary public, and shall, in form and content, be satisfactory to and approved by the town attorney.

The Code of Gilbert, Arizona, Chapter 18 Cable Communications, Section 18-64 Billing practices; information and procedures, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 18-64. Billing practices; information and procedures.

* * *

(c) In case of a billing dispute, the licensee must respond to a written complaint from a subscriber within 30 days. The licensee shall follow a written internal appeal or dispute resolution procedures for resolution of billing disputes. A current copy of the procedures shall be provided to the town ~~clerk~~ MANAGER and shall be kept on file in the town clerk's office.

* * *

The Code of Gilbert, Arizona, Chapter 18 Cable Communications, Section 18-82 Protection of town against liability, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 18-82. Protection of town against liability.

* * *

(b) Comprehensive liability insurance

- (1) Upon acceptance of a license, the licensee shall file with the town ~~clerk~~ MANAGER and shall thereafter during the entire term of such license maintain in full force and effect, at its own expense, a general comprehensive liability insurance policy or policies which shall insure licensee and provide primary coverage for the town, its officers, boards, commissions, agents and employees, against liability for loss or liability for personal injury, death, property damage (both automobile and non-automobile caused), or other damages. Such policy or policies shall include, but are not limited to, insurance against damages from unfair competition, copyright infringement (common law or statutory) and a failure of licensee to secure consents, occasioned by any activity or operation of licensee under such license, and regardless of any claimed or actual activities of town, its officers, boards, commissions, agents and employees other than gross negligence or willful misconduct. The manager, in any license granted, may waive the requirement for insurance from one or more perils mentioned in the last preceding sentence upon a finding that such insurance cannot be procured or cannot be procured at a reasonable cost, and in connection there with may reduce the otherwise required limits on coverage hereafter set forth. Such policy or policies shall be issued by a company approved by the manager and shall be in a form approved by the town attorney, with minimum combined single limits of liability coverage in the amount of \$3,000,000.00. The policy or policies shall name the town, its officers, boards, commissions, agents and employees as additional insured and contain a provision that a written notice of any cancellation, modification or reduction in coverage of said policy shall be delivered to the ~~clerk~~ MANAGER 30 days in advance of the effective date thereof. No license granted under this chapter shall be effective unless and until certificates of insurance evidencing coverage required above are delivered to the ~~clerk~~ MANAGER. Any substitute policy or policies shall be subject to the same approvals and shall comply with all of the provisions of this subsection.

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The Code of Gilbert, Arizona, Chapter 18 Cable Communications, Section 18-84 Construction bonds, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 18-84. Construction bonds.

(a) Thirty days prior to the commencement of any construction resulting in the physical disturbance of the town's rights-of-way, a licensee shall obtain and maintain throughout the period of system construction, at its cost and expense, and file with the ~~clerk~~ TOWN MANAGER, a corporate surety bond issued by a company authorized to do business in the State of Arizona, and found acceptable by the town attorney, in an amount established in a license agreement solely for the purpose of guaranteeing the timely construction and/or reconstruction of the cable system and the safeguarding of private property during construction and/or reconstruction. The bond shall provide, but not be limited to, the following condition: There shall be recoverable by the town, jointly and severally from the principal and surety, any and all damages, losses or costs suffered by the town resulting from the failure of a licensee to satisfactorily complete construction and/or reconstruction of its cable system throughout the license area pursuant to the terms and conditions of this chapter and such licensee's license.

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The Code of Gilbert, Arizona, Chapter 18 Cable Communications, Section 18-100 Miscellaneous provisions, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 18-100. Miscellaneous provisions.

(a) When not otherwise prescribed herein, all matters herein required to be filed with the town shall be filed with the office of the ~~clerk~~ TOWN MANAGER.

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The Code of Gilbert, Arizona, Chapter 19 Telecommunications Service, Section 19-4 Miscellaneous provisions, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 19-4. License application.

(a) Any telecommunications provider desiring a license or franchise under this chapter to construct, install, operate and maintain telecommunications facilities in streets and other highways of the town shall file an application with the town ~~clerk~~ TOWN MANAGER requesting at the applicant's election either a franchise or license, in the form prescribed by the town, and shall pay an application fee of \$2,500.00 payable in cash, certified or cashier's check, wire transfer, or in any other manner acceptable to the manager, made payable to the town. No application shall be considered without receipt of said fee. The applicant shall be

responsible for reimbursing the town's full reasonable costs in excess of the application, including, in the case of an application for a franchise, costs of an election. The application fee is in addition to any permit fees established pursuant to section 10-5 of this Code.

* * *

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

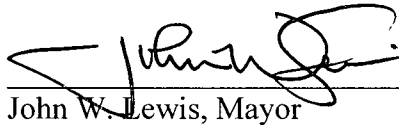
PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 19th day of February, 2015, by the following vote:

AYES: E. Cook, J. Daniels, J. Lewis, V. Petersen, B. Peterson,
J. Ray, J. Taylor

NAYES: none ABSENT: none

EXCUSED: none ABSTAINED: none

APPROVED this 19TH day of FEBRUARY, 2015.



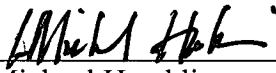
John W. Lewis, Mayor

ATTEST:




Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:



L. Michael Hamblin
Town Attorney

I, CATHERINE A. TEMPLETON, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 2523 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE 19TH DAY OF FEBRUARY, 2015, WAS POSTED IN FOUR PLACES ON THE 26th DAY OF February, 2015.



Catherine A. Templeton, Town Clerk